

Minutes of the Kansas Sentencing Commission Meeting August 26, 2004

The Honorable Ernest L. Johnson, Chairman, called the Kansas Sentencing Commission meeting to order on August 26, 2004, at 1:40 p.m. The meeting was held in the Senate Room of the Jayhawk Tower Building, Topeka, Kansas.

Attendance

Members: Honorable Ernest L. Johnson, Chairman; Paul Morrison, District Attorney, Vice Chairman; Honorable Christel Marquardt; Senator Greta Goodwin; Senator John Vratil; Representative Janice Pauls; Representative Jeff Goering; Roger Werholtz, Secretary, Department of Corrections; Chris Mechler, Office of Judicial Administration; Rick Kittel, Board of Indigents' Defense Services; Kevin Graham, designee, Office of Attorney General; Colene Fischli, designee, Kansas Parole Board; Dr. Donald Jackson, Public Member; Jaime Richardson, Public Member. Staff: Patricia Biggs, Executive Director; Julia Butler, Staff Attorney; Kunlun Chang, Research Director; Fengfang Lu, Research Analyst; Lora Moison, Research Analyst; Heidi Zimmerman, Research Analyst; Brenda Harmon, Administrative Assistant; Janice Brasher, Grant Administrator; Marty Schmiedeler, Accountant. Guests: Kristi Bilyew-Drewel, Department of Corrections; Robert Waller, Legislative Research.

Approval of the Minutes

The Chairman referred to the minutes of the July 15, 2004, Kansas Sentencing Commission meeting and asked for a motion to approve. A motion was made by Dr. Donald Jackson, and seconded by Representative Janice Pauls, to approve the minutes of the July 15, 2004, Kansas Sentencing Commission meeting. The motion carried.

Blakely v. Washington – potential issues for Kansas

Chairman Johnson provided an overview of the Blakely v. Washington case. This case made even more specific the holding of Apprendi that the maximum punishment for legal purposes was not maximum under a statute, but maximum that could be imposed based on facts determined by a jury. The issue of an enhancement or an aggravating factor, when it increases the punishment beyond what a jury's verdict would support, has to go to a jury again. Kansas already has the bifurcated program that was contemplated by the court in Gould, Apprendi and Blakely. Issues that have to do with the element aspect of an aggravating factor may, however, have an effect on Kansas. In the decision, the court said that enhancement factors (aggravators) need to be charged in the charging document and then proved beyond a reasonable doubt to a jury. By extension, if that were the case, it would require that the complaints and information include not only the elements of the charge, but also any aggravating factor the prosecution expected to urge on the court to enhance the punishment beyond the sentencing guidelines punishment.

The Honorable Christel Marquardt feels resolutions will be coming to the House of Delegates of the American Bar Association. They have a very strong lobbying group in Washington. She is keeping track of this, since she is in the House and able to speak on issues. She will bring the issues to the Sentencing Commission meetings as they begin to surface.

2004 Guidelines Desk Reference Manual

Ms. Patricia Biggs gave an update on the status of the 2004 Guidelines Desk Reference Manual. One shipment has been received, but there were errors in the printing, so they were returned to the print shop for corrections. Another draft copy is expected by the end of the week. The first set of boxes is expected next week, when mailing will begin.

Prison Population Subcommittee Report

Prison population subcommittee chairman Paul Morrison reported the first meeting scheduled for this subcommittee has been scheduled for the middle of September. Committee members include Paul Morrison, Roger Werholtz, Marilyn Scafe and Chris Mechler. The final report is due to the Legislature in February. An update will be made at the next Commission meeting.

Senate Bill 123 Subcommittee Report

Chairman Johnson provided an update on the status of the Senate Bill 123 subcommittee. The focus is being narrowed, concentrating on the reasons for any changes that are appropriate.

Senate Bill 123 Community Corrections Subcommittee Recommendations

Ms. Biggs discussed the Senate Bill 123 feedback documents received from the Community Corrections directors. Items covered included:

- Invoicing and the courtesy supervision process
- Funding caps for treatment modalities
- Total number of treatment months
- Inactive or active status
- Assessments being done post sentencing rather than pre-sentencing

Senate Bill 123 Treatment Duration – Caps versus Averages

Ms. Biggs discussed SB 123 treatment duration as it is noted in the implementation manual, with particular focus on the intermediate residential treatment. There has been much confusion on whether the manual refers to treatment lengths as duration or averages. A motion was made at the last Sentencing Commission meeting to send a memo out to Community Corrections agency directors and treatment providers stating these are firm caps, with no exceptions to be made. The memo is on hold until conflicting opinions are cleared up.

A motion was made by Representative Janice Pauls and seconded by Senator John Vratil to approve the reformation of the subcommittee members that worked on the development of cost caps and modality durations so they can clarify the intent of the language. The motion carried.

Commission members discussed whether the “Thinking for a Change” curriculum should be funded by SB 123. Roger Werholtz will research this issue, and report at the next meeting.

Proportionality Study – update from VERA

Ms. Biggs provided an overview of the draft of Executive Summary on the Proportionality Study received from the VERA Institute of Justice. In general, there seems to be proportionality within the Sentencing Guidelines. However, they do point out several areas of disproportionate sentence levels. VERA requested feedback from the Commission. Chair Johnson asked Commission members to email Ms. Biggs with any ideas or suggestions, which can then be forwarded to VERA within the next two weeks. The final report is expected by mid September.

Senate Bill 45 3-R Committee

Mr. Kevin Graham summarized a recent meeting of the Kansas Criminal Recodification, Rehabilitation and Restoration Project Committee, of which he is the vice chair. The mission of Senate Bill 45 is to review the recodification of the Kansas Criminal Code, to look at sentencing in general, and to examine prisoner reentry. The next meeting scheduled for this committee is September 14-15th.

Prison Population Projection 2005

Ms. Biggs gave a PowerPoint presentation of the Kansas Sentencing Commission Fiscal Year 2005 Adult Inmate Prison Population Projections. Projecting prison population primarily involves the use of two major data variables: the number of offenders admitted to prison and the corresponding length of the sentence imposed.

- FY 2005 projections indicate that the state’s prison population will increase by 1,339 inmates over the ten-year forecast period.
- The total prison population will reach 9,244 by the end of FY 2005, and it will show a continual increase to a projected 10,492 by the end of FY 2014.
- The overall admissions to prison of drug sentences have increased from 776 in FY 2000 to 1,138 in FY 2004.
- Parole/postrelease condition violators accounted for 2,292 admissions during FY 2004.
- The most significant increase in estimated prison bed needs are found on NonDrug Level 1, with an admission number of 761 in FY 2004, and a projected admission number of 1,310 in FY 2014, which is a 72.1% increase; and Off Grid offenders,

going from 691 admissions in FY 2004 to 1,054 projected admissions in FY 2014, which is a 52.5% increase.

A motion was made by Roger Werholtz and seconded by Kevin Graham to approve the FY 2005 Prison Population Projections. The motion carried.

Administrative: Deposit Slips/Voided Check

Ms. Brenda Harmon discussed with Commission members the updated information needed for reimbursements.

Next Meeting

The next Kansas Sentencing Commission meeting was scheduled for Thursday, September 30th, 2004, at 1:30 p.m.

Chairman Ernest Johnson made a motion to adjourn the Sentencing Commission meeting. Representative Jeff Goering seconded the motion. The motion carried, and the meeting was adjourned.